

BOARD OF APPEALS CASE NO. 5316

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BEFORE THE

APPLICANT: James & Valerie Scarborough

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ZONING HEARING EXAMINER

REQUEST: Variances for an existing swimming pool with decking, shed and 6 foot fence in the front yard setback; 711 S. Lanark Court, Bel Air

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OF HARFORD COUNTY

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Hearing Advertised

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Aegis: 1/1/03 & 1/8/03

HEARING DATE: February 3, 2003

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Record: 1/3/032 & 1/10/03

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ZONING HEARING EXAMINER'S DECISION

The Applicants, James and Valerie Scarborough, are requesting a variance, pursuant to Sections 267-26C(4) and 267-24B(1) of the Harford County Code, to allow an above-ground pool with decking, a shed and a six (6) foot fence within the front yard setback in an R2/COS Urban Residential /Conventional with Open Space zone.

The subject parcel is located at 711 Lanark Court and is more particularly identified on Tax Map 49, Grid 1F, Parcel 0260, Lot 43. The parcel consists of 0.328± acres, is zoned R2/COS and is entirely within the Third Election District.

The Applicant appeared before the Hearing Examiner and testified that his property is subject to three (3) front yard setbacks. The parcel backs to MD Route 543, resulting in the parcel having two front yard setbacks. Proposed is a patio/deck with a 16 foot by 32-foot above ground pool. A shed and 6 foot fence are also planned. According to the Applicant such structures are commonly found in his neighborhood and the fence will provide both privacy and security along the Route 543 property line. There is also an existing row of Blue Spruce evergreens along the Route 543 property line that provides screening. The Applicant pointed out that if his lot were identical in size but located on an interior street with only one front yard setback, he could build the proposed additions and install the pool without the need for any variances, much like other of his neighbors have done.

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The Applicant also pointed out that, if the developer had acquired a 10 foot strip of property along Route 543 and designated it “open space”, he would not need the variances he is requesting. Nearly every other neighbor along Lanark Court has applied for, and been granted similar variances. Most recently, the neighbor at 701 Lanark was allowed a variance under identical circumstances to construct an above ground pool, shed and fence in his yard.

Mr. Anthony McClune appeared as the representative of the Department of Planning and Zoning. The Department recommends approval of the requests. Mr. McClune agreed that the subject parcel is unique. It is subject to two (2) front yard setbacks, which is very unusual in Harford County. Additionally, unlike other developments along Route 543, this developer did not retain a 10-foot strip of open space along Route 543 that would have eliminated the need for such variances. Mr. McClune stated that the Department found the proposed uses and structures compatible with similar uses and structures in this neighborhood and the R2 zone in general and could not conclude that adverse impacts would result from approval. Mr. McClune pointed out that a denial of the requested variance would effectively prohibit any additions in this Applicant’s property. In conclusion, Mr. McClune opined that an approval was consistent with good zoning and planning principals and practices. Moreover, the Department recognizes that a number of the homeowners on Lanark Court have applied for similar variances that have been granted. According to Mr. McClune, if the developer had provided that 10 foot strip of buffer, none of these variances would be necessary. It is, in his opinion, however, unfair to disallow these variances given the mistake was made by the developer and not the homeowners. McClune pointed out that the buffer strip, had it been provided, would result only in lines on a property plat and no visible physical difference would occur on any of these parcels as a consequence.

There were no persons that appeared in opposition to this request.

CONCLUSION

The Applicants are requesting a variance pursuant to Section 267-26C(4) and 267-24B(1) of the Harford County Code to allow a patio/deck, pool and shed with a six (6) foot fence within the front yard setback in an R2/COS Urban Residential/Conventional with Open Space District.

Harford County Code Section 267-26C(4) provides:

“Use limitations. In addition to the other requirements of this Part 1, an accessory use shall not be permitted unless it strictly complies with the following:

- (4) No accessory use or structure shall be established within the required front yard, except agriculture, signs, fences, walls or parking area and projections or garages as specified in Section 267-23C, Exceptions and modifications to minimum yard requirements.”

Section 267-24B(1) provides:

“Fences and walls. Fences and walls may be located in required yards in accordance with the following:

- (1) Front yards. For single-family detached units, walls and fences shall not exceed four feet in height above ground elevation. Where fences and walls are an integral part of the unit design and are applied in a consistent and coordinated pattern throughout the project, fences and walls may be constructed to a maximum of six feet above ground elevation. For continuing care retirement communities, consistent and coordinated fencing or walls may be constructed to a maximum of eight feet above ground elevation provided strategically located gates are provided for emergency access.”

Section 267-11, permits variances and provides:

“Variances from the provisions or requirements of this Code may be granted if the Board finds that:

- (1) By reason of the uniqueness of the property or topographical conditions, the literal enforcement of this Code would result in practical difficulty or unreasonable hardship.
- (2) The variance will not be substantially detrimental to adjacent properties or will not materially impair the purpose of this Code or the public interest.”

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The Hearing Examiner, for the reasons stated by both the Applicant and the Department of Planning and Zoning, agrees that this parcel is unique. The proposed uses and structures are compatible with similar uses and structures commonly allowed and found in the R2 zone and it is difficult to foresee any adverse impact to adjoining or neighboring property owners as a result of an approval of the subject request. A denial of the request would operate to deprive the Applicant of uses commonly allowed to others residing within the zone.

For all of the foregoing reasons, the Hearing Examiner recommends approval of the request subject to the following conditions:

1. The Applicant obtains any and all necessary permits and inspections.
2. The existing tree screening located along the Route 543 property line shall be maintained.

Date MARCH 3, 2003

William F. Casey
Zoning Hearing Examiner